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Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 IO-13 TRSE-00 ACDA-12 OMB-01 HA-05
MCT-01 AF-10 CIAE-00 DODE-00 PM-05 H-01 INR-10
L-03 NSAE-00 NSC-05 PA-01 SP-02 SS-15 ICA-11
/108 W
----------058615 261531Z /41 L
R 261425Z APR 78
FM USMISSION USBERLIN
TO SECSTATE WASHDC 6729
AMEMBASSY BONN
INFO AMEMBASSY LONDON
AMEMBASSY PARIS

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 0997

E O 11652: XGDS-1
TAGS: PORS, PGOV BQG AKB
SUBJ: PRESENCE OF BGS IN BERLIN: UTILITY OF LEGAL STUDY ON
SUBJECT

REFS: (A) BONN 6162; (B) USBER 307; (C) BONN 1478; (D) 77 USBER
3230; (E) 75 BONN 4290; (F) 75 STATE 78928; (G) 75 BONN 5137;
(H) 75 BONN 5438; (I) 75 BONN 5837

SUMMARY: AFTER MUCH REFLECTION USBER HAS CONCLUDED IT WOULD
NOT RPT NOT BE USEFUL TO UNDERTAKE LEGAL STUDY OF TYPE EN-
VISAGED IN REF A. END SUMMARY.

1. THE ISSUE POSED IN REF A OF WHETHER THE BGS PRESENCE IN
ONE FORM OR ANOTHER IN BERLIN CONSTITUTES A VIOLATION OF
THE DEMILITARIZED STATUS OF BERLIN NEEDS TO BE VIEWED IN
HISTORICAL CONTEXT. IT SHOULD BE BORNE IN MIND THAT THE DEMILI-
TARIZATION OF GERMANY (INCLUDING BERLIN),
AS AGREED TO BY THE FOUR POWERS WAS A GENERAL
UNDERTAKING TO PREVENT THE REARMAMMENT
OF GERMANY, THAT CERTAIN FOUR-POWER LEGISLATION TOWARDS THAT END
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WAS PROMULGATED, BUT THAT MANY ASPECTS OF IMPLEMENTATION OF DE-
MILITARIZATION WERE NEVER TREATED BY THE FOUR POWERS.
THAT THIS GENERAL UNDERTAKING AND SOME DEMILITARIZATION
LEGISLATION STILL APPLY IN BERLIN IS A CONSEQUENCE OF
BERLIN'S CONTINUED OCCUPATION STATUS AND IS ALSO SOME-
WHAT PARADOXICAL INTHE FACE OF THE EXISTENCE OF THE
ARMED FORCES OF THE FRG AND GDR.

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2. SOME ASPECTS OF DEMILITARIZATION ARE CLEAR AND EX-
PRESS SUBJECTS OF FOUR POWER LEGISLATION REPEAT LEGISLA-
TION WHICH REMAINS IN FORCE IN BERLIN. IN GENERAL THIS
LEGISLATION PROHIBITS THE POSSESSION, MANUFACTURE, IMPORT,
EXPORT, ETC. OF WEAPONS OR OTHER TOOLS OF WAR. HOW-
EVER, ISSUES SUCH AS WHETHER OR NOT TO PERMIT AN FRG
PARA-MILITARY (OR FRG POLICE) FORCE LIKE THE BGS TO
OPERATE IN BERLIN UNDER ALLIED CONTROL ARE NOT RPT
NOT EXPRESSLY COVERED (AND CERTAINLY NOT EXPRESSLY PRO-
HIBITED) BY FOUR POWER LEGISLATION ON DEMILITARIZATION.

3. THE THREE ALLIES HAVE ALSO IMPLEMENTED THEIR INTER-
PRETATION OF DEMILITARIZATION BY REFUSING TO PERMIT EX-
TENSION TO BERLIN OF FRG LEGISLATION OR TREATIES WHICH
DEAL WITH MILITARY SUBJECTS. THUS THE FRG LAWS DEALING WITH
THE BUNDESWEHR AND COMPULSORY MILITARY SERVICE HAVE
NOT BEEN EXTENDED TO BERLIN. SIMILARLY THE FRG LAW
ESTABLISHING THE BGS AND GIVING THE BFS ITS TERMS OF
REFERENCE HAS NOT BEEN EXTENDED TO BERLIN. THIS MEANS
THAT ANY BGS ACTIVITY IN BERLIN CANNOT RPT NOT BE
BASED RPT BASED ON THE FRG LAW ESTABLISHING THE
BGS. ANY ACTION WHICH BGS PERSONNEL (IN GROUPS OF TWO'S
OR GROUPS OF HUNDREDS) PERFORM IN THE WESTERN SECTORS
OF BERLIN WOULD BE BASED ON SPECIFIC AUTHORIZATION OF
THE ALLIES JOINTLY OR INDIVIDUALLY, DEPENDING ON THE PAR-
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TICULAR ACTIVITY. A PARALLEL TO THIS IS THE BGS
GRUPPE-9 ACTION IN MOGADISCIO. WE ASSUME THAT THE GOVERNMENT
OF SOMALIA GAVE SPECIFIC (THROUGH GENERAL) AUTHOR-
IZATION TO THE BGS TO DO WHAT IT DID. THUS THE ACTION
OF THE BGS IN SOMALIA (WHERE, OF COURSE, THE FRG STATUTE
OF THE BGS ALSO DOES NOT APPLY) WAS BASED ON THE SOVER-
EIGN AUTHORITY OF THE GOVERNMENT OF SOMALIA.

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4. GIVEN THAT ALLIED AUTHORITY IN THE WESTERN SECTORS OF BERLIN IS SUPREME, WE CONSIDER THAT EMPLOYMENT IN BERLIN AT ALLIED REQUEST OF PERSONNEL FROM THE BGS WHO WHILE IN BERLIN ARE UNDER ALLIED (OR SECTOR COMMANDANT) CONTROL MAY RAISE PRESENTATIONAL OR POLICY ISSUES, BUT DOES NOT RAISE LEGAL ISSUES. ACCORDINGLY, WE CONSIDER THAT THE (PURPORTED) LEGAL ARGUMENTS ADVANCED BY BRITISH BONN GROUP REP (REF A) ARE PRESENTATIONAL OR POLICY ISSUES, AND MOSTLY THE FORMER, WHICH THE BRITISH ARE INCORRECTLY LABELLING AS LEGAL ISSUES.

5. THE QUESTION HAS ARISEN WHETHER THE BGS IS A MILI-
TARY OR A POLICE FORCE. IT CERTAINLY SEEMS THAT INI-
TIALLY, AT LEAST, THE FRG CONSIDERED IT A MILITARY FORCE SINCE, AS WE UNDERSTAND, THE FRG DID NOT EVEN SUGGEST THAT THE LAW ESTABLISHING THE BGS SHOULD BE EXTENDED TO BERLIN. AS PARA 1 THIS MESSAGE INDICATES, EVEN IF ONE CONSIDERS THE BGS TO BE AMILITARY UNIT, PERMITTING ITS MEMBERS TO OPERATE UNDER OUR CONTROL IN BERLIN CANNOT RPT NOT MATERIALLY UNDERMINE THE BASIC AND ORIGINAL FOUR-POWER OBJECTIVES OF PREVENTING REARMAMENT OF
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GERMANY. TO BE SURE, WE BELIEVE THAT THE ALLIES SHOULD CONTINUE TO PURSUE THE SCRUPULOUS IMPLEMENTATION OF EXIST-
ING FOUR POWER LEGISLATION AND IMPLEMENTATION IN THE WESTERN SECTORS OF BERLIN OF THE DEMILITARIZATION DE-
CISIONS OF THE ALLIED KOMMANDATURA. HOWEVER, IT RE-
MAINS IN LARGE PART FOR THE ALLIES TO DETERMINE WHAT AS A POLICY MATTER THEY WISH TO PERMIT OR PROHIBIT IN BERLIN ON GROUNDS OF DEMILITARIZATION; AND, IN OUR VIEW, IT IS NOT RPT NOT REQUIRED, AS A LEGAL MATTER, THAT THE ALLIES PROHIBIT THE PRESENCE OF FOREIGN MILITARY OR PARA-MILITARY (POLICE) IN BERLIN, WHEN SUCH MILITARY OR PARA-MILITARY (POLICE) FORCES ARE IN BERLIN AT OUR REQUEST AND UNDER OUR CONTROL.

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6. WE SHOULD REALIZE THAT WITH DEMILITARIZATION WE ARE NOT DEALING WITH AN ABSOLUTE BUT A GENERAL PRINCIPLE WHICH WE HAVE INTERPRETED STRINGENTLY IN SOME REGARDS AND LOOSELY IN OTHERS. IN REACHING ANY NEW POLICY POSITIONS, WE SHOULD ALSO UNDERSTAND THAT DEPARTURES ON OUR PART FROM A STRINGENT INTERPRETATION OF DEMILITARIZATION MAY BE PROTESTED BY THE SOVIETS, AND MAY BE USED BY THEM TO DEFEND SOVIET DEPARTURES FROM THE GENERAL PRINCIPLE AS WE BELIEVE IT SHOULD BE IMPLEMENTED.

7. WE HOPE THAT THE BONN GROUP WILL NOT REQUEST THE (TIME CONSUMING) PREPARATION OF A LEGAL STUDY WHICH WOULD, WE FEAR, ONLY LEAD TO THE BONN GROUP'S HAVING THE SAME DISCUSSION MONTHS FROM NOW WHICH IT IS NOW HAVING ON THE BGS.

8. ACTION REQUESTED: THAT BERLIN LEGAL ADVISERS NOT RPT NOT BE ASKED TO PREPARE LEGAL STUDY ON THIS CONFIDENTIAL

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MATTER AND THAT BONN GROUP PROCEED TO DEVELOP FEASIBLE METHOD TO PERMIT ALLIES IN BERLIN TO CALL ON BGS IF NECESSARY IN AN EMERGENCY (SEE REFTEL).GEORGE

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